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8 IN THE UNITED STATES BANKRUPTCY COURT
9 FOR THE DISTRICT OF DELAWARE
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11 In re
12 YELLOW CORPORATION, et al.
13
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Case No.: 23-11069 (CTG), et seq.
23-11081 (CTG)

**ALEJANDRO VIZCAINO'S MOTION FOR
RELIEF FROM AUTOMATIC STAY
UNDER 11 USC § 362(d); MEMORANDUM
OF POINTS AND AUTHORITIES**

Date: January 22, 2024
Time: 2:00PM
Judge: Hon. Craig T. Goldblatt

17 **ALEJANDRO VIZCAINO'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY**
18 **UNDER 11 U.S.C. § 362(d) OF THE BANKRUPTCY CODE**

19 Alejandro Vizcaino, ("Creditor" and/or "Movant"), by and through his undersigned counsel,
20 hereby move this court (the "Motion") pursuant to Section 362(d) of Title 11 of the United States
21 Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), Federal Rule of Bankruptcy Procedure
22 4001, and Local Rule 4001-1 of the Local Rules for the United States Bankruptcy Court for the
23 District of Delaware (the "Local Rules"), for entry of an Order granting relief from the automatic
24 stay imposed by Section 362(a) of the Bankruptcy Code in order to permit Movant to proceed with
25 the personal injury action in the Los Angeles County Superior Court in the State of California
26 against debtor USF Reddaway, Inc. (with the above-captioned co-debtors, the "Debtors") and to
27 proceed to collection any award against the Debtors' and/or the Debtors' applicable insurance
28 policies. In support of this Motion, Movant respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction of this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue in this judicial district is proper under 28 U.S.C. §1408 and 1409.

2. This is a core proceeding within the meaning of 28 U.S.C. § 157(b).

3. The statutory predicate for the relief requested herein is 11 U.S.C. § 362(d)(1) and § 365(d)(2), Bankruptcy Rule 4001, and Local Bankruptcy Rule 4001-1.

NOTICE

4. Pursuant to Local Rule 4001-(a), notice of this Motion has been provided to: (i) counsel for the Debtors; (ii) counsel for the Official Committee of Unsecured Creditors; (iii) counsel for the debtor-in-possession financing lenders; (iv) the Office of the United States Trustee; and the Chapter 7 Trustee. The Movant submits that no other or further notice need be provided.

RELIEF REQUESTED

5. Through this Motion, Movant seeks the entry of an Order pursuant to §362(d) of the Bankruptcy Code and 4001 of the Federal Rules of Bankruptcy Procedure, granting relief from the automatic stay so that he may proceed with his claims to judgment in the State Court Action and satisfy any award or other resolution he may obtain against the Debtors/Reddaway, the Debtors' applicable insurance policies any other responsible individual (LEGGETT and SIMON) or entity.

FACTS

6. On February 2, 2021, Alejandro Vizcaino ("Movant") filed a complaint against USF Reddaway, Inc., Leggett Mitchell, and Simon Scott in Los Angeles Superior Court Case No. 21STCV04177 alleging nine(9) causes of action for 1) Assault; 2) Battery; 3) False Imprisonment; 4) Negligence; 5) Intentional Infliction of Emotional Distress; 6) Negligent Infliction of Emotional Distress; 7) Negligent Hiring, Supervision, And Retention Of Employee; 8) Wrongful Termination; 9) Wrongful Termination in Violation of Public Policy ("State Court Action").

7. The case proceeded and answers were filed. Debtor/Reddaway's counsel also represents SIMON in this matter. LEGGETT is pro per.

8. The parties conducted written discovery and Defendant USF Reddaway took the deposition of Movant.

9. Trial was continued and set for December 6, 2023.

10. Movant noticed the depositions of Defendants USF Reddaway, Inc., Simon Scott, and Leggett Mitchell for August 2023.

11. On July 13, 2023, Defendant USF Reddaway filed a Motion for Summary Judgment which was to be heard on September 28, 2023.

12. On July 18, 2023, Movant filed a Motion for Summary Judgment which was to be heard on October 3, 2023

13. On August 8, 2023 (the "Petition Date"), each of the Debtors (Yellow Corporation and USF Reddaway, Inc. a subsidiary) filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the "Court"). The Debtors' have requested join administration of their bankruptcy cases.

14. Movant Alejandro Vizcaino was employed by USF REDDAWAY from 2016 to 2019. Defendants Leggett Mitchell and Simon Scott were co-workers and acquaintances. Plaintiff and LEGGETT had a history of not getting along. Defendant LEGGETT is a physically large individual, with a height of 6'3" and over 250lbs with an intimidating presence.

15. Prior to the Petition Date, on or about September 26, 2019, Movant was seriously and permanently injured as a result of being beaten by two co-workers, Leggett Mitchell (hereinafter "LEGGETT") and Simon Scott (hereinafter "SIMON"), also the Movant's union representative. This beating following two years of physical, mental, and harassment by LEGGETT and SIMON. The harassment, physical, and mental abuse was reported to Movant's employer, USF Reddaway, however USF Reddaway did not prevent the continued harassment and abusive behavior.

16. On September 26, 2019, at approximately 9:00 PM, just after Movant completed his shift he headed to the employee lounge to use the restroom before driving home. As the Movant entered the employee lounge he noticed LEGGETT talking with several other USF Reddaway

1 employees. LEGGETT give Movant a very intimidating stare, like so many times before. Movant
2 was worried but because other USF Reddaway employees were present, he didn't believe
3 LEGGETT would attempt anything at the time.

4 17. The Movant developed a concern that something might happen so he turned on his
5 phone's video camera and placed it in a belt holster. As Movant began to urinate, he heard the
6 bathroom door swing open. The Movant did not look at who came into the restroom but all of a
7 sudden LEGGETT struck Movant on the head and placed him in a headlock from behind.
8 LEGGETT then whispered to Movant that he was "going to kill" him and "all of his kids."
9 LEGGETT proceed to place Movant in a headlock and punching him at the same time. The
10 headlock caused Movant to lose consciousness.

11 18. When Movant regained consciousness, LEGGETT was on top of him with both
12 hands around his neck. Movant fought and struggled to break free and did break free. Once free,
13 Movant got up, headed to, reached for, and pulled the bathroom door. At that moment, LEGGETT
14 grabbed Movant and threw him to the ground. LEGGETT then closed and locked the door deadbolt.
15 Movant screamed for help and for LEGGETT to stop.

16 19. The beating and punching continued. Again, Movant reached for the door and to
17 unlock it but was unable to because LEGGETT started to bear hug him. At that moment Movant felt
18 helpless, his vision darkening and his eyes popping. LEGGETT held Movant for almost 5 minutes.
19 Movant then remembered his phone was recording everything and informed LEGGETT.
20 LEGFETT's focus shifted to destroying the phone. Movant broke free and grab the phone and
21 headed toward the door. Again, LEGGETT grabbed Movant and they wrestled. LEGGETT finally
22 became tired, and Movant got free. Immediately, Movant exited the bathroom and headed to his car
23 in the yard to go home.

24 20. This was the culmination of several years of bullying and harassing by LEGGETT
25 and SCOTT. LEGGETT regularly verbally and physically harassed Movant while working for
26 Debtors in 2016. The incidents began Movant's started first week of work at Debtors/REDDAWAY
27 in 2016 and continued regularly until September 26, 2019. LEGGETT harassed and bullied several
28 other co-workers during this time.

21. Movant report each incident he was harassed or bullied by LEGGETT to his employer (Debtors/Reddaway). In addition, Movant lodged complaints with the Union representatives. However, Debtors/Reddaway management/human resources failed to do anything to prevent the continued harassment and bullying. The Debtors management/human resources team failed to prevent LEGGETT from his increasing aggressive behavior, harassment, and bullying toward Movant.

22. The union representative, SIMON, also failed to do anything to prevent and protect Plaintiff or take action to reprimand stop LEGGETT's behavior. Instead, Defendant SIMON joined in with LEGGETT to harass and bully, even instigating physical fights with Movant.

23. LEGGETT and SIMON both remain employed by Debtor/Reddaway.

24. Upon information and belief, at the time of the September 26, 2019 beating, Debtor/Reddaway was covered by a liability insurance policy with coverage limits sufficient to cover Movant's claims.

25. Movant wishes to continue to pursue his claims against Debtor/Reddaway to the extent of the limit of the Debtors' applicable insurance policies available and to continue to pursue his claims against the individuals LEGGETT and SIMON.

26. Movant seeks an Order of this Court modifying the Stay and allowing him to pursue his claims against Debtors/Reddaway, only to the extent of the applicable limits of liability.

27. The Movant's claims have been delayed as a consequence of the Debtors' chapter 11 filings and the automatic stay provisions set forth in 11 U.S.C. §362(a).

28. Accordingly, Creditor seeks relief from the stay to liquidate the amount of his claims against the Debtors in an action which has already been commenced in the "State Court Action".

29. In addition, Movant wishes to pursue his claims in the nonbankruptcy forum against LEGGETT and SIMON as they have not filed bankruptcy.

ARGUMENT

30. Movant is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). Section 362(d) of the Bankruptcy Code provides in relevant part:

1 “On request of a party in interest and after notice and a hearing, the Court
 2 shall grant relief from the stay provided under subsection (a) of this
 3 section, such as by terminating, annulling, modifying, or conditioning
 such stay... (1) for cause, including the lack of adequate protection of an
 interesting property for such party interest.” 11 U.S.C. § 362(d).

4 31. As “Cause” is not defined in the Bankruptcy Code, it must be determined on a case-
 5 by-case basis. [*Int’l Bus. Machines v. Fernstrom Storage and Van Co.*, 938 F.2d 731, 735 (7th Cir.
 6 1991)]. Courts found cause for lifting or modifying the automatic stay exists in order to permit
 7 litigation in another forum to liquidate a claim. [*In re Rexene Products Co.*, 141 B.R. 574, 576
 8 (Bankr. D. Del. 1992) (noting that the legislative history of § 362(d) shows that cause may be
 9 established by a single factor such as “a desire to permit an action to proceed ... in another
 10 tribunal.”); *In re Holtkamp*, 669 F.2d 505 (7th Cir. 1982) (affirming the lifting of the automatic stay
 11 by the Bankruptcy Court to allow a personal injury suit against debtor to proceed to judgment)].

12 32. Under Section 362(d), the party opposing stay relief bears the burden of proof on all
 13 issues with the exception of the debtors’ equity in property. [*In re Domestic Fuel Corp.*, 70 B.R.
 14 455, 462-463 (Bankr. S.D.N.Y. 1987); 11 U.S.C. §362(g)]. If a creditor seeking relief from the
 15 automatic stay makes a prima facie case of “cause” for lifting the stay, the burden going forward
 16 shifts to the trustee pursuant to Bankruptcy Code Section 362(g). [*In re 234-6 West 22nd Street*
 17 *Corp.*, 214 B.R. 751, 756 (Bankr. S.D.N.Y. 1997)].

18 33. Courts follow the logic of the intent behind §362(d) which is that it is appropriate to
 19 allow litigation to proceed in a non-bankruptcy forum, if there is no prejudice to the estate, “in
 20 order to leave the parties to their chosen forum and to relieve the bankruptcy court from duties that
 21 may be handled elsewhere.” [*In re Tribune Co.*, 418 B.R. 116, 126 (Bankr. D. Del. 2009) (quoting
 22 legislative history of §362(d)) (internal citations omitted)].

23 34. This District relies on a three-pronged balancing test to determine whether “cause”
 24 exists for granting relief from the automatic stay to continue non-bankruptcy forum litigation: (1)
 25 Whether prejudice to either the bankrupt estate or the debtor will result from continuing the civil
 26 action; (2) Whether the non-bankrupt party hardship outweighs the debtor’s hardship in maintaining
 27 the stay; and (3) The creditor’s probability of success on the merits. [*In re Tribune Co.*, 418 B.R. at
 28 126].

1 35. In this case, the facts weigh heavily in Movant's favor. First, the Debtors/Reddaway
 2 will not suffer prejudice if the stay is lifted because Movant's claims must eventually be liquidated
 3 before they can recover from the bankruptcy estate and/or any applicable insurance coverage
 4 maintained by the Debtors/Reddaway. Movant's claims against Debtors/Reddaway are negligence,
 5 personal injury, and Negligent hiring, supervision, and retention of employees claim which do not
 6 present any factual or legal issues that will impact or distract the Debtors/Reddaway from
 7 reorganization or liquidation.

8 36. In addition, Movant's claims against Defendants LEGGETT and SIMON are
 9 negligence and personal injury which have no factual or legal issues that will impact or distract the
 10 Debtors/Reddaway from reorganization or liquidation.

11 37. Movant's claims involve personal injury and must be liquidated in a forum outside
 12 the Bankruptcy Court. [11 U.S.C. §157(b)(5) ("personal injury tort...claims shall be tried in the
 13 district court in which the bankruptcy case is pending, or in the district court in the district in which
 14 the claims arose...")]. Movant has also demanded a jury trial in the State Court Action and a jury
 15 trial is not available in the Bankruptcy Court.

16 38. Upon information and belief, the Debtors' liability in this matter is covered by
 17 insurance. As such, any recovery by Movant will not affect the Debtors' estates, or to the extent the
 18 Debtors' applicable insurance policies contain any self-insured retention, any direct recovery
 19 against the Debtors by Movant would result in a prepetition claim, treated as any other prepetition
 20 claim in the Debtors' cases. Any liability over and above any self-insured retention would be borne
 21 by the Debtors' insurers. [*In re 15375 Memorial Corp.*, 382 B.R. 652, 687 (Bankr. D. Del. 2008),
 22 rev'd on other grounds, 400 B.R. 420 (D. Del. 2009) ("when a payment by an insurer cannot inure
 23 to the debtor's pecuniary interest, then that payment should neither enhance nor decrease the
 24 bankruptcy estate" (quoting *In re Edgeworth*, 993 F.2d 51, 55-56 (5th Cir. 1993)); see also *In re*
 25 *Allied Digital Tech Corp.*, 306 B.R. 505, 510 (Bankr. D. Del 2004) (ownership by a bankruptcy
 26 estate is not necessarily determinative of the ownership of the proceeds of that policy)]. "[W]hen
 27 the debtor has no legally cognizable claim to the insurance proceeds, those proceeds are not
 28 property of the estate." [*In re Edgeworth*, 993 F.2d 51, 55-56 (5th Cir. 1993)].

1 39. Here the Movant is not seeking immediate recovery against the Debtors' or the
 2 Debtors' estate for any amount owed to them that is not covered by Debtors' insurance as a result of
 3 any settlement or judgment of the claims against the Debtors in the State Court Action. Upon
 4 information and belief, any settlement or judgment in the State Court action that results in liability
 5 of the Debtors not covered by applicable insurance would be limited in the amount of any self-
 6 insured retention, which would result in a allowed general unsecured claim against the Debtors
 7 estates, would be treated as any other allowed general unsecured claim in the Debtors' bankruptcy
 8 cases and as prescribed in any order confirming the Debtors' plan of reorganization or liquidation.
 9 Any liability over and above any self-insured retention would be borne by the Debtors' insurers. As
 10 such, relief would not prejudice the Debtors and would permit the immediate enforcement of any
 11 judgment against the Debtors' applicable insurance.

12 40. Additionally, Movant will face substantial hardship if the stay is not lifted.
 13 Movant's damages were caused as a result of the Debtors' negligence and Movant will be
 14 prejudiced by the continued delay resulting from the automatic stay due to the possibility of
 15 witnesses moving to unknown locations or who may pass away and the memory of events
 16 becoming less clear, especially since the events and occurrences occurred in 2021. Any further
 17 delay in permitting Movant to prosecute the State Court Action increases the likelihood that these
 18 witnesses will be lost or difficult to locate.

19 41. Movant resides in the State of California and the events which form the basis of their
 20 claims occurred exclusively in California. If Movant is forced to litigate his claims in Delaware, he
 21 would incur the increased expense of bringing attorneys, witnesses, and physical evidence to
 22 Delaware. "[O]ne of the primary purposes in granting relief from the say to permit claim liquidation
 23 is to conserve judicial resources." [*In re Peterson*, 116 B.R. 247, 250 (D. Colo. 1990)]. Judicial
 24 economy would be served by lifting the automatic stay and allowing Movant's claims to be
 25 liquidated in the forum where they are presently postured to be filed and adjudicated quickly.

26 42. Movant is entitled to a jury trial for his claims and damages and a jury trial is not
 27 available in this Court. A jury trial in the State of California is best suited to try all issues raised in
 28

1 the State Court Action. “It will be often be more appropriate to permit proceedings to continue in
2 their place of origin” [*In re Rexene*, 141 B.R. at 576. 21].

3 43. Lastly, the likelihood of success on the merits prong is satisfied by “even a slight
4 probability of success on the merits may be sufficient to support lifting an automatic stay.” [*In re*
5 *Continental Airlines, Inc.*, 152 B.R. 420, 426 (D. Del. 1993)].

6 44. The facts regarding the Debtors’ and the co-defendants’ negligence speak for
7 themselves as outlined in the competing Motions for Summary Judgments. Few defenses, if any,
8 much less strong defenses, appear to exist here. “Only strong defenses to state court proceedings
9 can prevent a bankruptcy court from granting relief from the stay in cases where...the decision-
10 making process should be relegated to bodies other than [the bankruptcy] court.” [*In re Fonseca v.*
11 *Philadelphia Housing Authority*, 110 B.R. 191, 196 (Bankr. E.D. Pa. 1990)].


12 45. A Court should lift the automatic stay to permit Movant to prosecute his claims
13 against the Debtors and co-defendants to judgment in the State Court Action and satisfy any award
14 or other resolution he may obtain against the Debtors from the Debtors’ applicable insurance
15 policies and any other individuals or entities that are responsible for the injuries sustained.

16 46. WHEREFORE, Movant respectfully request then entry of an order: (a) lifting the
17 automatic stay for cause to allow the State Court Action to continue through to judgment or other
18 resolution; (b) permitting Movant to liquidate and satisfy such judgment or other resolution granted,
19 if any, from applicable insurance coverage available to the Debtors, to the extent insurance is
20 available; (c) directed that relief from the automatic stay be effective immediately upon entry of an
21 order granting this motion and that the 14 day stay provided in Bankruptcy Rule 4001(a)(3) not
22 apply; and (d) granting such other and further relief as the Court deems appropriate.

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CHANG & LEE

Date: January 8, 2024

By 
Jason W. Lee, Attorney for Movant